

AUBREY D. BOYD (SBN 60632)  
Attorney at Law  
101 West Broadway, Suite 1950  
San Diego, CA 92101-8220  
Telephone: 619/231-0929

Darren J. Quinn (149679)  
Alexander E. Papaefthimiou (236930)  
LAW OFFICES OF DARREN J. QUINN  
12702 Via Cortina, Suite 105  
Del Mar, CA 92014  
Telephone: 858/509-9401  
Attorneys for Plaintiff SANDRA S. YBARRA

FILED  
08 FEB 22 PM 3:14  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CP  
DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SANDRA S. YBARRA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendants.

Case No. 08 CV 0350 BEN POR

CIVIL COMPLAINT FOR DAMAGES -  
NEGLIGENCE: Personal Injury

Demand is hereby made for  
Trial by Jury

Plaintiff alleges:

INTRODUCTION

1. This is an action for personal injuries sustained by plaintiff on federal property and, therefore, arises under the Federal Tort Claims Act, 28 U.S.C. §2671, et seq.

2. Plaintiff was lawfully upon property owned, operated and/or controlled by the Department of the Navy at the time of the incident which forms the subject of this action. Plaintiff alleges that her injuries and damages, *inter alia*, directly and legally resulted from the dangerous, defective and unsafe condition of the said property, and/or the negligence of defendant's agents, servants and/or employees while acting in the scope and course of their official duties, and with the permission and consent of the

1 defendant.

2 **JURISDICTION AND VENUE**

3 3. This Court has jurisdiction of this action pursuant to  
4 the provisions of 28 U.S.C. §1346(b).

5 4. Venue is proper in this district pursuant to 28 U.S.C.  
6 §1402(b) in that plaintiff SANDRA S. YBARRA is a citizen and  
7 resident of the County of San Diego, State of California, and the  
8 cause of action on which this action is based arose in that County,  
9 which is within the Southern District of California.

10 **PARTIES**

11 5. Plaintiff SANDRA S. YBARRA is a competent adult over the  
12 age of 21 years, residing in the aforementioned County and State.

13 6. The United States Department of the Navy is an agency and  
14 military branch of defendant UNITED STATES OF AMERICA, and as such  
15 the UNITED STATES OF AMERICA may be sued pursuant to 28 U.S.C.  
16 §2679 for the negligent acts and/or omissions of said agency and  
17 military branch.

18 **COMPLIANCE WITH THE FEDERAL TORT CLAIMS ACT**

19 7. On April 23, 2007, Plaintiff presented to the Department  
20 of the Navy her claim for the injuries, losses and damages suffered  
21 and incurred by her by reason of the hereinafter described  
22 occurrence, in the amount of \$150,000.00, all in compliance with  
23 the requirements of the Federal Tort Claims Act.

24 8. On or about November 16, 2007, plaintiff's said claim to  
25 the Department of the Navy was rejected in its entirety.

26 **FIRST CAUSE OF ACTION**  
27 **(Negligence)**

28 **(Plaintiff Against All Defendants)**

1           9. Plaintiff hereby incorporates each and every allegation  
2 contained in paragraphs 1 through 8, inclusive, of the Complaint  
3 herein by this reference as though set forth in full.

4           10. Plaintiff is informed and believes, and on such  
5 information and belief alleges, that at all times herein mentioned  
6 the Department of the Navy is and was the owner or lessee and/or  
7 otherwise entitled to the possession, use and control of a certain  
8 retail business premises located at or near, 2260 Callagan Highway,  
9 Building 3187, in the City of San Diego, County of San Diego, State  
10 of California, and that said facility is and was operated and  
11 controlled by agents, servants and/or employees of said Department.

12           11. On or about May 3, 2005, at or about the hour of 5:00  
13 p.m., Plaintiff was lawfully walking at the end of a display aisle  
14 in the aforementioned retail business premises near a display stack  
15 of Natural Ice beer cases.

16           12. At said time and place, defendant, by and through its  
17 agents, servants and/or employees and each of them, so negligently  
18 stacked, stored, maintained, controlled, displayed and/or  
19 inspected, and/or failed to inspect, the aforementioned cases of  
20 beer; and/or so negligently hired, employed, trained, instructed,  
21 qualified, assisted and/or supervised their agents, servants and/or  
22 employees; and/or negligently enacted or failed to enact/adopt  
23 and/or enforce policies and/or procedures relative to the proper  
24 and safe stacking, storage and/or display of the said beer cases;  
25 and/or negligently warned or negligently failed to warn customers  
26 at the said premises, including plaintiff herein, of the danger  
27 posed by the stacked cases of beer, so as to create a dangerous,  
28 defective and unsafe condition of the said property, and to

1 otherwise cause some of the aforementioned cases of beer to fall  
2 from the said stack and to strike plaintiff, and to thereby cause  
3 plaintiff to suffer the injuries and damages as hereinafter  
4 described.

5 13. As a direct and legal result of the negligence of the  
6 defendant, and/or the dangerous, defective and unsafe condition of  
7 the said property, and the resulting fall of the said cases of  
8 beer, plaintiff was hurt and injured in her health, strength and  
9 activity, sustaining injury to her body and shock and injury to her  
10 nervous system and person, all of which injuries have caused, and  
11 continue to cause plaintiff great mental, physical, and nervous  
12 pain, suffering and disability, all to her damage in a sum to be  
13 determined at trial. Plaintiff prays leave to amend the herein  
14 Complaint to insert the amount thereof when ascertained. Plaintiff  
15 is informed and believes that she has sustained permanent injuries  
16 as a result of the aforementioned events.

17 14. As a further direct and legal result of said negligence  
18 of the defendant, and/or the dangerous, defective and unsafe  
19 condition of the said property, and the resulting fall of the said  
20 cases of beer, plaintiff has been, and in the future will be,  
21 required to obtain the services of hospitals, physicians, surgeons,  
22 and other medical practitioners, and has and will continue to incur  
23 other medical expenses in an amount unknown to plaintiff at this  
24 time. Plaintiff prays leave to amend the herein Complaint to  
25 allege the amount thereof when ascertained.

26 **SECOND CAUSE OF ACTION**  
27 **(Negligence Per Se)**

28 **(Plaintiff Against All Defendants)**

1           15. Plaintiff hereby incorporates each and every allegation  
2 contained in paragraphs 1 through 11, inclusive, of the Complaint  
3 herein by this reference as though set forth in full.

4           16. At said time and place, defendants, and each of them, so  
5 negligently, and/or in violation of applicable safety laws, rules,  
6 regulations and/or policies, so negligently stacked, stored,  
7 maintained, controlled, displayed and inspected, an/or failed to  
8 inspect, the aforementioned cases of beer; and/or so negligently  
9 hired, employed, trained, instructed, qualified, assisted and/or  
10 supervised their agents, employees and co-defendants; and/or  
11 negligently enacted or failed to enact/adopt and/or enforce  
12 policies and/or procedures relative to the proper and safe  
13 stacking, storage and/or display of the said beer cases; and/or  
14 negligently warned or negligently failed to warn persons at the  
15 said premises, including plaintiff herein, of the danger posed by  
16 the stacked cases of beer, so as to create a dangerous, defective  
17 and unsafe condition on the said property, and otherwise caused  
18 some of the aforementioned cases of beer to fall from the said  
19 stack and to strike plaintiff, and to thereby cause plaintiff to  
20 suffer the injuries and damages as hereinafter described.

21           17. Plaintiff hereby incorporates each and every allegation  
22 contained in paragraphs 13 through 14, inclusive, of the Complaint  
23 herein by this reference as though set forth in full.

24                           **THIRD CAUSE OF ACTION**  
25                           **(Negligence - *Res Ipsa Loquitur*)**

26                           **(Plaintiff Against All Defendants)**

27           18. Plaintiff hereby incorporates each and every allegation  
28

1 contained in paragraphs 1 through 11, inclusive, of the Complaint  
2 herein by this reference as though set forth in full.

3 19. The aforementioned fall of the said cases of beer onto  
4 plaintiff is an event of the kind that ordinarily does not occur in  
5 the absence of negligence; that at the time the said cases of beer  
6 fell, they were within the exclusive control or right of control  
7 of defendants and each of them, or defendants and each of them  
8 originally had control or right of control of the cases of beer,  
9 which was not mishandled or its condition otherwise changed after  
10 defendants relinquished control of same; and that the said fall of  
11 the said cases of beer was not proximately caused or contributed to  
12 by any action on the part of plaintiff. Based upon these  
13 allegations/facts, plaintiff intends to rely in whole or in part  
14 upon the legal doctrine of *res ipsa loquitur* at the time of trial  
15 as affecting the burden of proof on the issue of defendants'  
16 negligence.

17 20. Plaintiff hereby incorporates each and every allegation  
18 contained in paragraphs 13 through 14, inclusive, of the Complaint  
19 herein by this reference as though set forth in full.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays judgement against defendants, and  
22 each of them as follows:

23 1. The sum of \$150,000.00 for general damages, including but  
24 not limited to pain and suffering, mental and emotional injuries  
25 and upset, and for all past, present and future medical and  
26 incidental expenses;

27 2. For costs of suit herein incurred;

28 3. For legal interest;

1        4.     For jury trial on all claims so triable; and

2           5.   For such other and further relief as the Court may deem  
3   proper.

5 Dated: February 21, 2008

AUBREY D. BOYD, ESQ.  
Attorney for Plaintiff  
SANDRA S. YBARRA

16 C:\My Documents\CLIENTS\ADB\Ybarra, Sandra\Federal - Complaint.wpd

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

SANDRA S. YBARRA

(b) County of Residence of First Listed Plaintiff San Diego, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
AUBREY D. BOYD, ESQ.  
101 W. Broadway, Ste. 1950, San Diego, CA  
619/231-0929

## DEFENDANTS

UNITED STATES OF AMERICA

County of Residence of First Listed Defendant San Diego, CA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Any)

08 CV 0350 BEN POR

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Sec. 2671, et seq.

Brief description of cause:

Personal Injury - premises, general negligence

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE John A. Houston

DOCKET NUMBER 07CV1350JAH (RBB)

DATE

2/22/08

SIGNATURE OF ATTORNEY OF RECORD

Aubrey D. Boyd, Esq.

FOR OFFICE USE ONLY

RECEIPT #

147988

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

81 2/22/08

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 147988 - SH**

**February 22, 2008  
15:17:11**

**Civ Fil Non-Pris**

USAO #.: 08CV0350

Judge.: ROGER T BENITEZ

Amount.: \$350.00 CK

Check#.: BC8381

**Total-> \$350.00**

**FROM: YBARRA V. USA**